

Application No.: 10/038,545Docket No.: H1139.0107REMARKS

Claims 1 to 12 are pending and stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,563,613 to Tochio for reasons set forth on pages 2 to 6 of the Office Action. By this Response, applicant respectfully traverses these rejections. Reconsideration of the subject application in view of the following remarks is respectfully requested.

Independent claims 1 and 5 each require judging whether the transmission line distance is larger or smaller than "a reference value." The prior art, Tochio, merely states that it "decides" the transmission timing of the uplink signals from the subscriber stations (col. 7, lines 1-4).

In the previous Office Action and in the present Final Office Action, it is stated that the "decision" in Tochio inherently involves a reference value. Applicant respectfully disagrees.

In response to the previous Office Action, applicant argued that the use of a reference value is not inherent in Tochio, as Tochio could make its decision by comparing the measured delay times to each other, as opposed to comparing the measured values to "a reference value" as claimed. In response to this argument, the Final Office Action opined that one or all of the measured transmission times can themselves be considered "a reference value." Applicant respectfully disagrees.

If all of the measured delay times in Tochio are compared to one another and considered "a reference value" as stated in the Final Office Action, then this speculative interpretation of the operation of Tochio does not read on the requirements of independent claims 1 and 5 — a determination of whether each of the measured transmission distances to the subscriber units is "larger or smaller than a reference value." In the scenario speculated by the Office Action, there would be multiple reference values used for the determination (each of the measured times) and not a

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single reference value as required by claims 1 and 5. Therefore, even if Tochio can perform its decision as speculated in the Final Office Action, such a process used by Tochio would not read on claims 1 and 5.

If only one of the measured subscribed times in Tochio is chosen and used as the claimed reference value, this speculative operation of Tochio violates the theory as recited in the Final Office Action itself. The Final Office Action theorized that the system in Tochio makes a **nonrandom**, information-based judgment according to some reference value. If Tochio were presumed to have used a single one of the measured transmission times as "a reference value" as speculated in the Final Office Action, then it is unspecified as to which transmission time is chosen to decide whether the other transmission time is smaller or larger, because there is no such showing or teaching in Tochio. Without any teachings, one skilled in the art will have to randomly chose one of the measured transmission times as "a reference value." Consequently, this speculative operation of Tochio would be based on a random choice. Accordingly, the "decision" in Tochio becomes a random one. As a result, such presumption of using one transmission time would render Tochio a random system and thus contradict to the assertion that the judgment in Tochio is information based and nonrandom.

Further, applicant fails to see any useful information that would result from determining whether the other transmission times were larger or smaller than a single one of the transmission times. No intelligent decision as to avoiding collisions could be made from this information.

In view of the above, applicant respectfully submits that the claimed invention is not disclosed by Tochio, either expressly or inherently. Therefore, the subject rejections are thus believed to be overcome, withdrawal of which is respectfully requested. Accordingly, all pending claims in the subject application are believed to be in condition for allowance.

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No fee is believe to be due for this Amendment. Should any fee be required, please charge such fee to Deposit Account No. 50-2215.

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Respectfully submitted

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